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U.S. Department of Energy
Office of Civilian Radioactive Waste Management
1551 Hillshire Drive M/S 011
Las Vegas, NV 89134

Re: Comments to Draft Supplemental Environmental Impact
Statement for a Spent Nuclear Fuel and High-Level Radioactive
Waste at Yucca Mountain, Nye County Nevada

To Whom It May Concern:

- 1 [The Timbisha Shoshone Tribe ("Tribe") hereby submits the following comments concerning the Draft Supplemental Environmental Impact Statement (EIS). Please note that as the Tribe was only recently granted affected status this past July 2007, we provide these comments in the absence of being able to fully analyze and address the issues addressed by the EIS documents. With the arrival of appropriate financial support, we will provide supplemental comments to this and the rail alignment EIS as soon as practicable.]

Comments:

Procedural Comments:

- 2 [There were limited hearing opportunities outside Nevada, especially concerning the TAD canister proposal;

The comment period was inadequate relative to the size, scope and importance of the environmental documents prepared;

There is inadequate time for the Department of Energy to consider the multitude of comments and issue Final EIS's;]

Timbisha Shoshone Tribe

- 3 [There is the absence of a contingency plan for reliance on final EIS's in the event the TAD system or rail alignment proposals are rejected.]

PROJECT FACILITY COMMENTS

Proposed Action:

- 4 [The Timbisha Shoshone is opposed to any proposed action(s) by any government or non-government party that will alter, destroy, negatively impact and or reduce the Timbisha Shoshone's ability to celebrate and or reaffirm its cultural heritage and or the cultural heritage of other indigenous peoples. The Timbisha Shoshone believe that the project, as currently contemplated, will negatively impact our culture, including its religious practices, health, and economy.]
- 5 [The Timbisha Shoshone believe that the United States governments acquisition and dispensation of information concerning the Yucca Mountain Project (YMP) has been woefully inadequate and does not satisfy the governments legal and regulatory obligation to obtain indigenous peoples perspectives concerning the YMP depository project and its potential impacts. The Timbisha Shoshone insist that the best and most meaningful means of communicating would be on a government-to-government basis.]
- 6 [The YMP study area and nearby lands have significant cultural importance to the Timbisha Shoshone and to other indigenous peoples, which include the Timbisha Shoshone, which is a part of the Western Shoshone. These lands contain rich traditional religious, gathering and recreational areas that are life sustaining and lie at the core of indigenous life. In contrast, however, non-Indigenous peoples may view the proposed action lands as remote, low populated and barren, and a lifeless place, where a highly controversial project such as Yucca Mountain should be located. This contrasting perspectives lie at the core of the present controversy of the appropriateness of the YMP location and precisely why it is very important that before any proposed action move forward, that the indigenous peoples perspectives concerning the YMP site be fully evaluated, studied and documented. As of the date of these comments, the studies that have been conducted fail to include the complete indigenous perspective and it is recommended that the DOE thoroughly assess and fully fund any and all research documenting indigenous people's perspectives and concerns with the YMP.

All further studies, including geological, hydrological, ethnological, archeological, meteorological and volcanological should be conducted

focusing on the indigenous persons point of view, which would assist the DOE to better understand the complex cultural perspectives of indigenous peoples. Likewise, scientific experts who have gained the trust of or who are highly familiar with indigenous peoples cultural perspectives, specifically, the perspectives and traditions of area indigenous peoples, should be utilized, again, to better develop the indigenous perspective to the project and proposed land use.]

Scientific Modeling

7 [In reading the Depository SEIS it became immediately apparent that scientific modeling is at the core of a significant percentage of assumptions DOE makes concerning potential environmental impacts. However, these models fail to include a quantification of the "perceived risks" of indigenous peoples. While many of these models base assumptions on a "worst case scenario" they fail to include the perceived risks of indigenous peoples. Therefore, if modeling is to be used, perceived risks should be quantified as part of the risk analysis modeling process. Again, experts familiar with and who have gained the trust of indigenous peoples should be included in the risk analysis modeling team.]

Land Use and Ownership

8 The main points of our opposition are based on: (1) title issues, failure to provide promised responses and failure to address cultural resource damages and (2) environmental sustainability and lack of US legal compliance. [There is no valid extinguishment title to this area and we have not given approval of this activity. On March 10, 2006 in Geneva, Switzerland, an historic and strongly worded decision by the United States Nations Committee for the Elimination of Racial Discrimination (CERD) and the United States was urged to "freeze", "desist" and "stop" actions being taken or threatened to be taken against the Western Shoshone Peoples of the Western Shoshone Nation, of which the Timbisha Shoshone are a part. In its decision, CERD stressed the "nature and urgency" of the Shoshone situation informing the US that it goes "well beyond" the normal reporting process and warrants immediate attention under the Committee's Early Warning and Urgent Action Procedure.

And finally, referencing once again the title issue which cannot be ignored; the 1863 Treaty of Ruby Valley recognizes and follows a clear chain of title, excepting Western Shoshone lands out of the State of Nevada and any claim of "federal" title.

The 1787 Northwest Ordinance (still in effect) states that: "The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent."

The 1834 Trade and Intercourse Act (still in effect) restricts authority to make land transactions with Indian Nations. Section 11 prohibits any person from making a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe." Section 12 provided that "no purchase, grant lease, or other conveyance of lands, or of any title or claim thereto, from any Indian Nation or tribes of Indians, shall be of any validity in law or equity, unless the same is made by treaty or convention entered into pursuant to the Constitution."

The 1861 Nevada Territorial Act referred to in the 1787 Northwest Ordinance and stipulated that Indian lands "shall be excepted out of the boundaries, and constitute to part of the territory of Nevada."

Article 6 of the US Constitution confirms the authority of the Ruby Valley Treaty upon all entities of the United States: "This Constitution, and the Law of the United States which shall be made in pursuance thereof; and all shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or Law of any state to the contrary notwithstanding." Clearly, the Treaty of Ruby Valley is such a document and appropriates Western Shoshone land.

Therefore, any considerations concerning YMP land use and ownership concerns must include a full assessment and consideration of indigenous peoples and communities views of the potential environmental impacts arising due to the proposed YMP activities.]
Additionally, the EIS is absent the following information:]

Facility Design

9 [The SEIS is incomplete as it was presented with an incomplete depository design in addition to incomplete construction and operations plans. Additionally, facility design and construction plans are not complete without the input of Native American persons or designers familiar with Native American construction or design concerns. The SEIS also does not fully analyze the following:

- Waste handling risk activities, specifically the models used to determine the thermal output of spent nuclear fuel
- Emplacement drift design and specifications

- Thermal energy studies which support the thermal output of waste packages
- Heat transfer issues, specifically the anticipated steam associated with emplaced spent nuclear fuel. Does the steam actually move away from the steam bed? Do midpillar region temperatures actually maintain a temperature below the boiling point of water?
- Thermal Energy Density, the criteria upon which it is based, its scope or acceptable variances
- Emplacement steam water flow
- Seismic activity prone to the Yucca Mountain site which may weaken depository, depository support facility and emplacement drift structural integrity]

Design, Transportation and Use of Appropriate Shipping Containers

10 [The SEIS is incomplete concerning the design, transportation and use of Appropriate shipping containers and absent a full analysis of the risks concerning:

- A final TAD design, the SEIS only includes a "proof of concept";
- Whether the TAD design will be subject to full-scale, accident (crash, fire, terrorist attack, etc.) testing prior to implementation
- TAD design and testing costs
- Disclosure of whether any of the reactor sites will have specific problems with the use of the proposed TAD systems
- Data and or modeling that includes considerations of human error in the design, fabrication and loading of shipping casks;
- Disclosure of the costs, design, efficiency, structural integrity (subjectivity to rust, corrosion and tensile strength) and testing of: TAD's and shielded transfer casks, aging over packs, emplacement pallets, waste packages and drip shields
- Disclosure of the consequences of less than 75 percent of waste packaging in TAD casks
- The DOE offers no meaningful alternative to the proposed TAD canister system;]

Aesthetic Resources

11 [The SEIS concludes that the environmental impacts upon study area aesthetic resources would be small. Specifically, the document indicates that a potential impact would exist if lighting is required to be installed at the top of YMP ventilation stacks. Indigenous persons believe it is important that their view of the YMP study area be unobstructed without the distraction of buildings, roads and other

impediments to the spiritual interaction between the people and their lands. Therefore, any and all proposed modifications to the YMP area should include indigenous persons and or representatives, to assist with the design and construction of YMP facilities. Such representation will provide an opportunity for indigenous persons to voice their concerns and design YMP facilities that are the least intrusive to the surrounding landscape. Finally, the Tribe is opposed to the addition of any lighting scheme to YMP ventilation towers.]

Air Quality and Climate

- 12 [Although the EIS states that the release of nonradiological air pollutants, including cristobalite, resulting from depository construction will be well below EPA National Ambient Air Quality Standards, any release of additional air pollutants are of great concern to the Timbisha Shoshone. The EIS should include information concerning what affect, if any, the release of nonradiological air pollutants will have within the YMP study area, specifically within traditional Native American religious, cultural and gathering areas. Studies should include what affects non-radiological air pollutants may have on sensitive groups, such as elders and children.]

Groundwater Resources

- 13 [The SEIS anticipates potential impacts to surface and groundwater to be small. However, the SEIS also spends a considerable amount of time discussing a potential impact to the YMP area water flow, specifically the Amargosa Desert, which may be interrelated to the Ash Meadows alluvial aquifer (see 3-32). This information and the discussion of potential contamination is of intrinsic concern to the Timbisha Shoshone because it maintains a 300 plus acre trust land area near the Ash Meadows aquifer which is within our home lands, situated in the heart of the Death Valley National Monument. The Tribe is concerned about any radiological or hazardous material contamination of available drinking waters at the YMP site for tribal members and the flora and fauna that drink these waters. Moreover, the Timbisha Shoshone are specifically concerned about any migration of polluted waters to the Death Valley trust lands, where a significant population of its membership reside, and to non-trust areas, where high percentages of members reside. Therefore, the SEIS is incomplete absent additional studies concerning impacts to both surface and ground waters, and potential contaminated water migration upon the Amaragosa Desert and Ash Meadows alluvia aquifers.]

Biological Resources

- 14 [Although the SEIS assumes that environmental impacts to biological resources will be *small*, the document again fails to quantify the impacts to plants, game and fish ecosystems traditionally used by indigenous peoples. Indigenous people have a unique means of viewing the land and the biological resources it provides. This view includes the concept that indigenous peoples are "one" with the land and manage its resources with future generations in mind. Therefore, any SEIS absent an assessment of traditional cultural ecosystem considerations is insufficient to base further action. Therefore, it is recommended that future environmental documents include an assessment of Indigenous people's ecosystem perspectives and concerns. This again, is especially important as the SEIS concede that some impacts may occur to indigenous resources such as Bighorn sheep, Prong Horn, deer and possibly fish. Moreover, clearly defining an indigenous ecosystem is critical to implementing an appropriate ecosystem management program.]

Socioeconomics

- 15 [The SEIS evaluates social and economic activities within the study area and makes a general statement concerning potential socioeconomic impacts that *the percentage of value of changes would be low*. However, the report is absent information concerning socioeconomic impacts to the indigenous economy within the study area. Additional data is required to provide a complete perspective of socioeconomic impacts to indigenous peoples. Within the YMP area there are several Indian reservations, tribal enterprises, tribally controlled schools, tribal police departments and tribal emergency response units, many of which are federally funded. The SEIS does not presently quantify the potential impact to these federally funded programs, i.e. whether, school or public safety or business employment would be adversely impacted. Additionally, several tribes have shown interest in developing potential economic vehicles both within and near the study area. A full evaluation of all potential impacts to these indigenous services and businesses should be conducted. Studies should include, but should not be limited to:

- YMP affect on tribal members leaving the study and near by areas
- Potential impact on tribal salaries and employment
- Potential impact on Housing and Urban Development grants and funds
- Potential impact on federal Indian education monies

- Potential impact upon Indian police, fire and emergency response grant funding
- Potential impact on the loss of tribal culture and community as a result of the above potential socioeconomic impacts

Finally, a complete socioeconomic assessment would include specific data concerning the potential impacts upon "affected status" designated indigenous communities such as the Timbisha Shoshone. Such an assessment would include specific studies detailing any and all socioeconomic impacts upon the Timbisha Shoshone, its trust areas within and without the YMP area and in areas where high concentrations of its members reside.]

Occupational Health and Safety Impacts

Radiation Exposure

- 16 [Although the SEIS assumes that the exposure to radiation both by non-workers and workers will be low, the SEIS is absent any information concerning indigenous peoples perspectives concerning their view of radiation in general and or what irradiation (exposure) to plants, game and minerals exposure means to them. For example, many indigenous cultures believe the concept of irradiation includes the release of "angry powers" that can only be satisfied by a return of the power to its original release point. Additionally, indigenous cultures also believe that they can neither eat game, plants nor use minerals in areas exposed to these powers, therefore making it impossible to perform religious, cultural or gathering activities in the areas of exposure. Additional studies concerning indigenous peoples perceptions concerning radiation are required to be conducted to acquire the complete perspective concerning occupational health and safety impacts.]

Utilities, Energy and Materials

- 17 [The SEIS indicates that quantities of utilities, energy and materials used in support of depository construction activities will be *small* in comparison to regional supply capacity. The SEIS should include information concerning any potential impact to Native American use of utilities, energy and materials, i.e. whether prices or the availability of utilities, energy and materials will be impacted on or near reservation lands.]

Hazardous Materials and Wastes

- 18 [The SEIS concludes that any YMP hazardous materials and or wastes will be appropriately disposed of in regional and statewide landfills, with little or no impact to existing regional or state waste disposal requirements. However, the SEIS is absent information concerning the indigenous cultural perspective concerning how best to appropriately dispose of hazardous materials and waste. Additional studies, with the assistance of indigenous persons, should be conducted and included within subsequent environmental documents concerning the appropriate means of disposing of hazardous materials and waste. In short, indigenous persons should be included in any assessment and siting of waste disposal in general and the siting of new waste disposal facilities specifically.]

Cultural Resources

- 19 [The SEIS connotes impacts to cultural resources to be in the area of small to moderate and that the DOE would use best practices to mitigate potential cultural resource impacts. The proposed action and alternative of no-action lack the appropriate studies and or reports analyzing the complete impact upon cultural resources, sacred sites, and game and gathering areas within and near the YMP site. Therefore, at this time, in the absence of an appropriate assessment, the Tribe cannot support either YMP proposal. Additional studies should include an appropriate assessment, documentation and inventory of cultural sites and the cultural dynamic involved. Additionally, the SEIS is absent]
- 20 [Additionally, it is recommended that a document, something akin to a cultural resource management plan, be developed to specifically address and monitor the assessment of YMP upon indigenous cultural resources. Such assessments should, again, includes indigenous representatives, and if possible, indigenous experts or experts familiar with and respected by indigenous communities and their cultural resources. The above approach would greatly assist in the identification, evaluation and monitoring of cultural resources and assist in promoting government-to-government relations.

With these assessments completed, and in the event YMP is approved as an appropriate location for a spent nuclear fuel depository, the Tribe could recommend that specific cultural and or ceremonial areas be set aside as American Indian Cultural Resource Areas (AICRA).]

Environmental Justice

- 21 [The SEIS makes a general statement that *the proposed action would not result in disproportionately high and adverse impacts to minority or low income populations*, and that the study was conducted pursuant to Executive Order 12898, however, this statement does not fully quantify the impacts to minority and low income persons as compared to those of the non-minority or low income community in general. Further evaluation is needed because quite often, persons at the lower end of the financial spectrum, when impacted, face impacts that are many times more severe than those faced by non-minorities or low income persons, this is unfortunately true with indigenous communities in general and indigenous peoples specifically. Therefore, additional studies should be performed to identify and address any disproportionately high and adverse effects of the proposed action on indigenous federal programs, policies and economies.]

A. Emergency Response

- 22 [An appropriate environmental justice analysis should also include a complete evaluation of indigenous people's ability to respond to a radiological emergency. This is especially significant because many of the indigenous peoples that may be potentially impacted by the YMP have limited either resources or lack resources entirely to adequately respond to an emergency. Upon quantifying the communities' ability to appropriately respond and any response training or equipment needs, the DOE should adequately fund identified needs.]

Site Reclamation

- 23 [The SEIS includes statements concerning the reclamation, recovery and abandonment of the YMP site upon the fulfillment of its depository mission. However, the SEIS is absent information and an assessment concerning the indigenous peoples perspective of what is required to "restore" or reclaim an area that has been disturbed by activities of the scale and scope of YMP. Therefore, any SEIS discussion of post YMP operations must include a fully funded systematic study, conducted with impacted indigenous peoples, concerning any and all contemplated post YMP closing environmental restorative actions. Indigenous people should also be employed by the DOE to monitor reclamation activities.]

Response to No-action Alternative

- 24 [Presently, the Tribe cannot support the SEIS's No-action alternative. Even with no action possible threats to indigenous peoples cultural resources, sacred sites and game and plant gathering areas may be

realized. Moreover, many indigenous communities believe that lands presently under the jurisdiction of various federal agencies do not provide the level of preservation and protection that the YMP land use area may provide. The Tribe suggests that YMP continue to do its best to protect cultural resources, sacred sites, game and plant gathering areas in cooperation with various indigenous groups and organizations, including the Western Shoshone Nation and the Consolidated Groups of Tribes and Organizations.]

Additional Tribal Concerns:

- 25 [The Yucca repository project is viewed as a violation of Western Shoshone territorial sovereignty from trespass by the DOE in development of the Yucca Mountain site;]
- 26 [The Yucca Mountain Repository Project takes land and cultural resources out of the use of Western Shoshone people, of whom the Timbisha Shoshone are members;]
- 27 [Make fully available the American Indian Writers Subgroup (AIWS) article *American Indian Perspectives on Proposed Rail Alignment*]
- 28 [The project impacts Indian peoples by diminishing the capacity for self-government from the deployment of limited human and technical resources from normal day-to-day affairs to unfounded monitoring and response to DOE characterization and licensing activity;]
- 29 [Potential reduction in Western Shoshone peoples use of land, plant and animal]
- 30 [The potential disturbance and possible destruction of Western Shoshone cultural resources;]
- 31 [Potential Impacts to lands and economic development outside the 50-mile radiological region, specifically to tourism in the Death Valley National Park area, which may impact the Timbisha Shoshone Tribe's ability to sustain economic development;]
- 32 [Potential impacts to the self-governance of the Timbisha Shoshone Tribe;]
- 33 [Potential impacts to the Government-to-Government relationship between the Tribe and federal government;]
- 34 [Potential impacts to lands held in trust for the tribe near the proposed rail line;]

- 35 [Potential contamination of water resources from potential radiological release;]
- 36 [Potential impacts to infrastructure such as roads and power lines and to emergency response in case of an accident on the reservation or within the tribal emergency response area;
- Potential impacts to land use outside the 50-mile radiological region, due to the possibility of a transportation accident or accident at the Yucca Mountain site;]
- 37 [Potential impacts to tribal fiscal resources for having to review and respond to DOE documents;]
- 38 [Potential impacts to sustainable tribal economic development due to the stigma of nuclear transportation near reservation lands;]
- 39 [Potential impacts to services such as law enforcement and the lack of emergency training or preparedness/response equipment;]
- 40 [Potential impacts to the Tribe's cultural relationship to lands that may be removed from tribal use and access due to the rail transportation route(s) and construction activities;]
- 41 [Potential damage to animal habitat from Yucca Repository project and rail construction activities;]
- 42 [Potential damage to the health and safety of tribal members from possible exposure to radiation due to a depository or rail accident or terrorist attack;]
- 43 [Potential contamination of traditional food sources such as wood, grasses, pinion nuts, animal protein;]
- 44 [Potential loss of tribal budget funding due to tribal member migration away from proposed rail transportation routes.]

Sincerely,



Joe Kennedy
Chairman, Timbisha Shoshone